

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

UNITED STATES OF AMERICA	:	
	:	Civil Nos. 1:02-CV-109-1 (WLS)
Plaintiff,	:	and 1:03-CV-122-3 (WLS)
	:	
v.	:	
	:	
AMERICAN CYANAMID, et al.	:	
	:	
Defendants.	:	
	:	

PARTIAL CONSENT DECREE WITH
MID-CONTINENT COMMODITY EXCHANGE, INC.

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	:	Civil Nos. 1:02-CV-109-1 (WLS)
Plaintiff,	:	and 1:03-CV-122-3 (WLS)
	:	
v.	:	
	:	
AMERICAN CYANAMID, et al.	:	
	:	
Defendants.	:	
_____	:	

PARTIAL CONSENT DECREE WITH
MID-CONTINENT COMMODITY EXCHANGE, INC.

I. BACKGROUND

A. On July 1, 2002, the United States filed a complaint in *United States v. American Cyanamid, et al.*, No. 1:02-CV-109-1(WLS) (M.D. Ga.) against various parties pursuant to Sections 107 and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9607, and 9613(g)(2), seeking reimbursement, pursuant to CERCLA Section 107, of the costs incurred and to be incurred by the United States in responding to releases and threats of releases of hazardous substances at the Stoller Chemical Company/Pelham Site ("Stoller/Pelham Site" or "Site"), in Pelham, Mitchell County, Georgia.

B. On or about August 6, 2003, the United States filed a complaint in *United States v. Midcontinent Commodity Exchange, Inc.*, No. 1:03-CV-122-3(WLS) (M.D. Ga.) pursuant to CERCLA Sections 107 and 113(g)(2), 42 U.S.C. §§ 9607, and 9613(g)(2), in which the United States also seeks to recover, pursuant to CERCLA Section 107, the costs incurred and to be incurred by the United States in responding to releases and threats of releases of hazardous

substances at the Site.

C. Simultaneous with the filing of the complaint against Midcontinent Commodity Exchange, Inc. ("Midcontinent"), the United States moved to consolidate that case (No. 1:03-CV-122-3) with *United States v. American Cyanamid, et al.*, No. 1:02-CV-109-1(WLS) (M.D. Ga.). The Court granted the United States' motion on March 1, 2004.

D. Midcontinent, the Defendant that has entered into this Partial Consent Decree ("Settling Defendant") does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint, and disputes the factual and legal basis for Plaintiff's claims.

C. The United States and Settling Defendant agree, and this Court by entering this Partial Consent Decree finds, that this Partial Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Partial Consent Decree is fair, reasonable, and in the public interest. THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendant. Settling Defendant consents to and shall not challenge entry of this Partial Consent Decree or this Court's jurisdiction to enter and enforce this Partial Consent Decree.

III. PARTIES BOUND

2. This Partial Consent Decree shall inure to the benefit of and be binding upon the

United States and upon the Settling Defendant and Settling Defendants' successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Partial Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Partial Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Partial Consent Decree or in any appendix attached hereto, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
- b. "Partial Consent Decree" shall mean this Partial Consent Decree and all appendices attached hereto. In the event of conflict between this Partial Consent Decree and any appendix, the Partial Consent Decree shall control.
- c. "Day" shall mean a calendar day. In computing any period of time under this Partial Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.
- e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.
- f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance

Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

h. "Paragraph" shall mean a portion of this Partial Consent Decree identified by an Arabic numeral or an upper or lower case letter.

i. "Parties" shall mean the United States and the Settling Defendant.

j. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA has paid at or in connection with the Site through the effective date of this Partial Consent Decree.

k. "Plaintiff" shall mean the United States.

l. "Section" shall mean a portion of this Partial Consent Decree identified by a Roman numeral.

m. "Settling Defendant" shall mean Defendant Midcontinent Commodity Exchange, Inc., also known as Mid-Continent Commodity Exchange, Inc., and James Pollock, in his capacity as that company's president.

n. "Site" shall mean the Stoller Chemical Company Superfund site, encompassing approximately 500 acres, located at 106 Mitchell Street, in Pelham, Mitchell County, Georgia, and depicted more clearly on the map included in Appendix A.

o. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. REIMBURSEMENT OF RESPONSE COSTS

4. Payment of Past Response Costs to the EPA Hazardous Substance Superfund.

Within 30 days after entry of this Partial Consent Decree, Settling Defendant shall pay to the EPA Hazardous Substance Superfund \$50,000 in reimbursement of Past Response Costs.

Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2002V00299, the EPA Region and Site Spill ID Number 04ZM, and DOJ Case Number 90-11-3-07602. Payment shall be made in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit of the U.S. Attorney's Office in the Middle District of Georgia following lodging of the Partial Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day. Settling Defendant shall send notice to EPA and DOJ that payment has been made in accordance with Section XI (Notices and Submissions) and to:

Ms. Paula V. Batchelor
U.S. EPA, Region IV
SEIMB
Waste Management Division
61 Forsyth St., S.W.
Atlanta, Georgia 30303

**VI. FAILURE TO COMPLY WITH REQUIREMENTS
OF PARTIAL CONSENT DECREE**

5. Interest on Late Payments. In the event that any payments required by Section V (Reimbursement of Response Costs) or Section VI, Paragraph 6 (Stipulated Penalty), are not received when due, Interest shall continue to accrue on the unpaid balance through the date of payment.

6. Stipulated Penalty.

a. If any amounts due to EPA under this Partial Consent Decree are not paid by the required date, Settling Defendant shall pay to EPA as a stipulated penalty, in addition to the

Interest required by Paragraph 5, \$500 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund" and shall be sent to:

U.S. Environmental Protection Agency
Region 4
Superfund Accounting
P.O. Box 100142
Atlanta, GA 30384
Attn: Collection Officer in Superfund

All payments shall indicate that the payment is for stipulated penalties and shall reference the name and address of the party making payment, EPA Region 4 and Site Spill ID Number 04ZM, USAO File Number 2002V00299, and DOJ Case Number 90-11-3-07602. Copies of checks paid pursuant to this Paragraph, and any accompanying transmittal letters, shall be sent to EPA and DOJ as provided in Section XI (Notices and Submissions) and to:

Ms. Paula V. Batchelor
U.S. EPA, Region IV
SEIMB
Waste Management Division
61 Forsyth St., S.W.
Atlanta, Georgia 30303

c. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Partial Consent Decree.

7. If the United States brings an action to enforce this Partial Consent Decree, Settling Defendant shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

8. Payments made under Paragraphs 5-7 shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to comply with the requirements of this Partial Consent Decree.

9. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Partial Consent Decree.

VII. COVENANT NOT TO SUE BY PLAINTIFF

10. Covenant Not to Sue by United States. Except as specifically provided in Paragraph 11 (Reservation of Rights by United States), the United States covenants not to sue Settling Defendant pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Section V, Paragraph 4 (Payment of Past Response Costs to the EPA Hazardous Substance Superfund) and Section VI, Paragraphs 5 (Interest on Late Payments) and 6(a) (Stipulated Penalty). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Partial Consent Decree. This covenant not to sue extends only to Mid-Continent Commodity Exchange, Inc. and James Pollock, in his capacity as that company's president, and does not extend to any other person.

11. Reservation of Rights by United States. The covenant not to sue set forth in Paragraph 10 does not pertain to any matters other than those expressly specified therein. The United States reserves, and this Partial Consent Decree is without prejudice to, all rights against

Settling Defendant with respect to all other matters, including but not limited to:

- a. liability for failure of Settling Defendant to meet a requirement of this Partial Consent Decree;
- b. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- c. criminal liability;
- d. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606; and
- e. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs.

VIII. COVENANT NOT TO SUE BY SETTLING DEFENDANT

12. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Partial Consent Decree, including but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of response actions at the Site for which the Past Response Costs were incurred; and
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

13. Nothing in this Partial Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or

40 C.F.R. § 300.700(d).

IX. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

14. Nothing in this Partial Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Partial Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

15. The Parties agree, and by entering this Partial Consent Decree this Court finds, that Settling Defendant is entitled, as of the effective date of this Partial Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Partial Consent Decree. The "matters addressed" in this Partial Consent Decree are Past Response Costs.

16. Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Partial Consent Decree, it will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Partial Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Defendant shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Partial Consent Decree.

17. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs incurred after the effective date of this

Partial Consent Decree, and/or other relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VII.

X. RETENTION OF RECORDS

18. Until 10 years after the entry of this Partial Consent Decree, Settling Defendant shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

19. After the conclusion of the document retention period in the preceding paragraph, Settling Defendant shall notify EPA and DOJ at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA or DOJ, Settling Defendant shall deliver any such records or documents to EPA. Settling Defendant may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, it shall provide Plaintiff with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this

or any other Partial Consent Decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendant shall retain all records and documents that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor.

20. By signing this Partial Consent Decree, Settling Defendant certifies individually that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against the Settling Defendant regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

XI. NOTICES AND SUBMISSIONS

21. Whenever, under the terms of this Partial Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the

individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Partial Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendant, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-3-07602)
P.O. Box 7611
Washington, D.C. 20044-7611

As to EPA:

Bonnie R. Sawyer, Esq.
Environmental Accountability Division
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

Greg Armstrong
SEIMB
Waste Management Division
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

As to Settling Defendant:

Mr. James Pollock
President
Midcontinent Commodity Exchange, Inc.
8230 Forsyth Blvd.
St. Louis, MO 63105

XII. RETENTION OF JURISDICTION

22. This Court shall retain jurisdiction over this matter for the purpose of interpreting

and enforcing the terms of this Partial Consent Decree.

XIII. INTEGRATION AND APPENDIX

23. This Partial Consent Decree and the appended map of the Site (Appendix “A”) constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Partial Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Partial Consent Decree.

XIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

24. This Partial Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Partial Consent Decree disclose facts or considerations which indicate that this Partial Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Partial Consent Decree without further notice.

25. If for any reason this Court should decline to approve this Partial Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XV. EFFECTIVE DATE

26. The effective date of this Partial Consent Decree shall be the date upon which it is entered by the Court.

XVI. SIGNATORIES/SERVICE

27. The undersigned representative of the Settling Defendant to this Partial Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division

of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Partial Consent Decree and to execute and bind legally such Party to this document.

28. The Settling Defendant hereby agrees not to oppose entry of this Partial Consent Decree by this Court or to challenge any provision of this Partial Consent Decree, unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Partial Consent Decree.


29. The Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Partial Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.


SO ORDERED THIS ____ DAY OF _____, 200 .

United States District Judge

The Undersigned Parties enter into this Partial Consent Decree in the matter of *United States v. American Cyanamid et al.* (Nos. 1:02-CV-109-1 (WLS) and 1:03-CV-122-3 (WLS)), relating to the Stoller Chemical Company Superfund Site and the alleged liability of Midcontinent Commodity Exchange, Inc. at that Site.


FOR THE UNITED STATES OF AMERICA


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Acting Assistant Attorney General
Environment and Natural Resources
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U.S. Department of Justice
Washington, D.C. 20530


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Virginia State Bar No. 24293
Senior Attorney
Environmental Enforcement Section
U.S. Department of Justice
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Washington, D.C. 20044-7611
(202) 514-2068/353-0296(FAX)

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Georgia State Bar No. 293239
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(478) 752-3511/3403(FAX)

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A red rectangular box, likely a placeholder for a signature or stamp.

JIMMY PALMER

Regional Administrator

U.S. Environmental Protection Agency, Region 4

61 Forsyth Street, S.W.

Atlanta, Georgia 30303-8960

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ON BEHALF OF DEFENDANT
MIDCONTINENT COMMODITY EXCHANGE, INC.

JAMES POLLOCK
President
Midcontinent Commodity Exchange, Inc.
8230 Forsyth Blvd.
St. Louis, Missouri 63105

If different from above, the following is the name and address of Settling Defendant's agent for service of process, and the name and address of Settling Defendant's counsel. Counsel may act as agent for service.

Agent for Service

Attorney

Name

Name

Address

Address

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

UNITED STATES OF AMERICA	:	
	:	Civil Nos. 1:02-CV-109-1 (WLS)
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	:	
v.	:	
	:	
AMERICAN CYANAMID; et al.	:	
	:	
Defendants.	:	
_____	:	

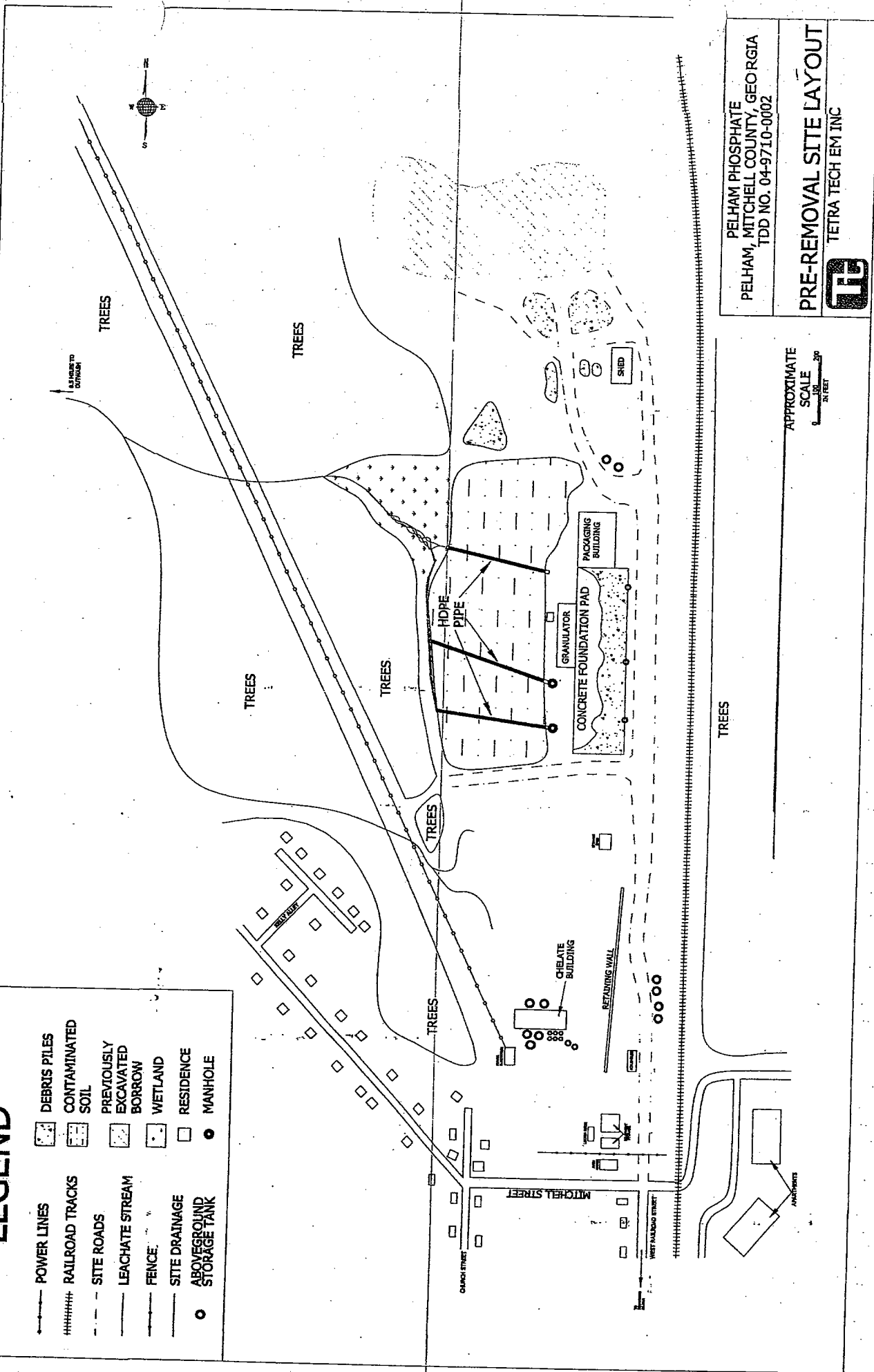
PARTIAL CONSENT DECREE WITH
MID-CONTINENT COMMODITY EXCHANGE, INC.

APPENDIX “A”

MAP OF STOLLER CHEMICAL COMPANY SITE

LEGEND

- | | | | |
|-------|--------------------------|---|-----------------------------|
| —●— | POWER LINES | ▨ | DEBRIS PILES |
| +++++ | RAILROAD TRACKS | ▨ | CONTAMINATED SOIL |
| - - - | SITE ROADS | ▨ | PREVIOUSLY EXCAVATED BORROW |
| — | LEACHATE STREAM | ▨ | WETLAND |
| — | FENCE | □ | RESIDENCE |
| — | SITE DRAINAGE | ○ | MANHOLE |
| ○ | ABOVEGROUND STORAGE TANK | | |



PELHAM PHOSPHATE
PELHAM, MITCHELL COUNTY, GEO RGIA
TDD NO. 04-9710-0002

PRE-REMOVAL SITE LAYOUT



TETRA TECH EM INC